

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LYNNE AVRAM, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

SAMSUNG ELECTRONICS AMERICA,
INC., and LOWE'S HOME CENTERS, INC.,

Defendants.

Civil Action No. 2:11-CV-06973 (KM)(JBC)

**DECLARATION OF JOSEPH I.
MARCHESE IN SUPPORT OF
PLAINTIFF'S OBJECTIONS TO
MAGISTRATE JUDGE CLARK'S
JULY 24, 2015 ORDER ON DISCOVERY**

I, Joseph I. Marchese, declare as follows:

1. I am an attorney at law licensed to practice in the State of New York. I have been admitted *pro hac vice* in this matter, and I am a partner in the law firm Bursor & Fisher, P.A., counsel of record for Plaintiff Lynne Avram. I make this declaration in support of Plaintiff's Objections to Magistrate Judge Clark's July 24, 2015 Order on Discovery. I have personal knowledge of the facts herein and if called as a witness, I could and would testify competently thereto under oath.

2. Attached hereto as **Exhibit A** is a true and correct copy of the July 24, 2015 hearing transcript.

3. Attached hereto as **Exhibit B** is a true and correct copy of a certified translation of an internal Samsung email bearing Bates numbers SEA-018180-018183.

I declare under the penalty of perjury under the law of the State of New York that the foregoing is true and correct. Executed on August 7, 2015 at New York, New York.



Joseph I. Marchese

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

AVRAM,	.
	.
Plaintiff,	.
	. Case No. 11-cv-06973
vs.	.
	. Newark, New Jersey
SAMSUNG ELECTRONICS AMERICA,	. July 24, 2015
INC., et al.,	.
	.
Defendants.	.

TRANSCRIPT OF TELECONFERENCE
BEFORE THE HONORABLE JAMES B. CLARK, III
UNITED STATES MAGISTRATE JUDGE

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5 Proceedings recorded by electronic sound recording; transcript
6 produced by transcription service.

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1 (Commencement of proceedings at 11:32 A.M.)

2

3 THE COURT: Good morning, counsel, Judge Clark
4 here. Just let me say for the record, because we are on the
5 record, this is Avram versus Samsung Electronics America
6 Inc., et al., Civil Action Number 11-6973 (KM). And it is
7 about 11:33 on Friday, July 24th, 2015.

8 Can you all just enter your appearances for the
9 record, please.

10 MR. TAYLOR: Good morning, Your Honor, Lindsey
11 Taylor from Carella Byrne on behalf of the plaintiffs.

12 THE COURT: Good morning.

13 MR. MARCHESE: Good morning, Your Honor, this is
14 Joseph Marchese from Bursor & Fisher on behalf of the
15 plaintiffs.

16 THE COURT: Good morning.

17 MR. OLISS: Good morning, Your Honor, this is Phil
18 Oliss from Squire Patton Boggs on behalf of defendant Samsung
19 Electronics America.

20 THE COURT: Good morning.

21 MR. O'HARA: And good morning, Your Honor, Jim
22 O'Hara with Graham Curtin, and it's -- we represent both
23 Samsung and Lowe's.

24 THE COURT: Good morning.

25 Let me say as a first bit of housekeeping, I

1 understand you have two motions to seal in front of us, and I
2 had a conversation with my clerk. She advises me that the
3 orders may not be in a form that the local rules require. So
4 you may want to check with her, give a call in perhaps later
5 today or at your convenience. I -- it's my understanding the
6 motions to seal are unopposed, but they -- the papers do need
7 to be in the form that's required by the rules before we can
8 actually enter that. So I would just have you give her a
9 ring. Her name's Amanda Laufer.

10 The primary -- the primary issue today seems to me
11 to be the letters that you have all written with respect to
12 this B goods discovery. The plaintiff wrote a letter dated
13 June 26th, 2015, that is Document 116 on the docket. And the
14 defendants replied on July 2d, 2015. And that's
15 Document Number 119 on the docket. And those documents are
16 currently sealed.

17 So I'm -- I guess I want to get right to it, and it
18 seems to me that all of the -- well, let me first ask. Who
19 on the plaintiff's side's going to be doing the talking for
20 plaintiff, Mr. Taylor or Mr. Marchese.

21 MR. MARCHESE: Mr. Marchese.

22 THE COURT: Mr. Marchese. Okay.

23 And how about for defendants, Mr. Oliss?

24 MR. O'HARA: Yes, Your Honor.

25 THE COURT: Okay. Mr. Marchese, you mentioned a

1 couple of interrogatories. You mention a 30(b)(6)
2 deposition. All of this relates to your desire to discover
3 information with respect to the B goods, though. Is that
4 right?

5 MR. MARCHESE: And there were some document
6 requests as well, right.

7 THE COURT: Right. But it all -- it all relates to
8 the -- essentially to the same thing. So we have to evaluate
9 whether or not this is an appropriate area for discovery.

10 Now, Mr. Marchese, my -- my question to you, the
11 defendants have said that this stuff is entirely irrelevant.
12 And they make the point that it doesn't really bear on the
13 benefit of the bargain analysis that you claim is so
14 important when you're trying to make out claims in a class
15 action like this. Why -- why is this material, this B --
16 this B goods information relevant at all to what you're
17 trying to prove here, which, as I understand it, the loss
18 that each class member can fairly claim because the
19 refrigerators at issue were improper -- at least according to
20 you, improperly labeled as ENERGY STAR-efficient, which means
21 that in your view, they're more -- they're not as efficient
22 as advertised, let's say.

23 But why is the B goods information relevant to that
24 particular claim?

25 MR. MARCHESE: Sure. So it goes to -- it goes to

1 | our damages calculations. And in particular, it shows the
2 | value of the goods as accepted by the class members, that
3 | being without being ENERGY STAR-qualified, because the --
4 | the, quote/unquote, B goods that we're discussing, they are
5 | units of the model RF26VAB. After the EPA removed that model
6 | from the list of ENERGY STAR-qualified refrigerators, and
7 | then Samsung took back that remaining inventory from the
8 | retailers in its distribution channel, stripped off the
9 | ENERGY STAR markings or logos from the units, and then sold
10 | those units for deeply discounted price, which -- to the
11 | plaintiff's damages expert, the economist, Colin Weir, we --
12 | reliable retail discount percentage by using the difference
13 | between, for example, even if there's a wholesale price of
14 | the B goods by Samsung and comparing it to the wholesale
15 | price that Samsung received for new unit of the RF26 --

16 | THE COURT: But are you saying -- are you saying --

17 | MR. MARCHESE: -- ENERGY STAR.

18 | THE COURT: Are you saying that the B goods, that
19 | the only reason that they were removed from the shelves and
20 | sent back as B goods and resold was because of the ENERGY
21 | STAR designation? I mean, are you saying that --

22 | MR. MARCHESE: That is -- that is our understanding
23 | and contention, Your Honor.

24 | THE COURT: Well, Mr. Oliss --

25 | MR. MARCHESE: It's the same refrigerator. It's --

1 our contention is it's the same exact refrigerator minus the
2 ENERGY STAR.

3 And that is exactly what is the crux of this case.
4 And, you know, as the Court knows, we have -- as plaintiff,
5 we have the burden at the class certification stage, you
6 know, to show damages that are calculable on a classwide
7 basis to satisfy Rule 23(b)(3)'s predominance requirement
8 under Comcast. And we also have the burden on the merits.
9 For example, with our expressed warranty claims to conduct a
10 benefit -- damages calculation. And that we think that this
11 B goods information is a critical part of that.

12 THE COURT: Well, Mr. Marchese, I mean, that -- let
13 me just talk about is I think is an important point. You're
14 alleging that the only reason that these -- these
15 refrigerators were removed from the shelves, as it were, and
16 returned and sold as B goods is because they were improperly
17 labeled Energy Star-efficient or compliant and that they
18 stripped the ENERGY STAR label off and then resold them.

19 MR. MARCHESE: Yes.

20 THE COURT: My understanding of B goods, at least
21 in a classic sense is that they're -- they're kind of the --
22 you know, the there's something wrong with them --
23 something -- something more -- I don't know -- scratched,
24 they're dented, they're -- the doors are crooked.

25 I mean, Mr. Oliss, you tell me, is Mr. Marchese's

1 | characterization of the reason why these B goods were
2 | recalled correct? Or is there something more to it?

3 | MR. O'HARA: There is something more to it,
4 | Your Honor.

5 | So part of the background of this case is that the
6 | model at issue, this 26VAB was actually in end of life in
7 | 2009. It was disqualified from the ENERGY STAR program in
8 | March of 2010. But it had already been transitioned out in
9 | favor of newer models.

10 | And that -- the testimony of the witnesses --
11 | Mr. McCarter explains this, but the 26VAB was transitioned
12 | out, really, by summer or fall of 2009, leading up to Black
13 | Friday and the introduction of new models.

14 | So when the DOE approached Samsung with the issue
15 | of the ENERGY STAR testing that had been performed, you know,
16 | and part of the story, of course, is the incentive for
17 | Samsung to dispute the delisting process was pretty low,
18 | given the status of the refrigerator, but more to the point,
19 | which Samsung agreed to do was to go to Lowe's in an attempt
20 | to identify what refrigerators may be remaining in inventory.
21 | And not surprisingly it turned out that there were some, a
22 | few hundred in inventory, but they were, as we understand it,
23 | exactly what Your Honor just described, scratch and dent or
24 | open box, floor models, not -- you know, not the shiny, new
25 | refrigerators that you have -- that you would have seen a

1 year earlier.

2 So they -- you know, they collected these
3 refrigerators to remove them from the distribution channel,
4 and donated some to charity, and sold some others. We do not
5 have good records of what happened to these particular
6 refrigerators. But the full story is that while they were
7 removed for the -- because of the ENERGY STAR issues, the
8 refrigerators we're talking about are not really comparable
9 to the refrigerators that were sold to members of the class
10 because they were open box models.

11 THE COURT: Mr. Marchese, I mean, I understand why
12 you would want to get this information and rely on it,
13 because these things were -- it sounds like were probably
14 sold at a deep, deep discount, and that would mean, at least
15 the argument would follow *ipso facto* that the ENERGY STAR
16 designation was worth, you know, so very much.

17 But I mean, in a practical sense, honestly, isn't
18 getting this information and isn't making that pitch as to a
19 bunch of late -- you know, late-term refrigerators, many of
20 which are scratched and dented, many of which are donated
21 because they don't know what to do with them, isn't that just
22 going to muddy the waters? I mean, it seems to me, not only
23 it may not be relevant, it may be contrarily irrelevant.

24 Are you still -- you still with us, Mr. Marchese?

25 Oh, boy, Mr. Oliss, are you with us?

1 MR. O'HARA: I am.

2 THE COURT: Mr. Marchese, do we still have with us?

3 MR. TAYLOR: Let me check, Your Honor.

4 THE COURT: Is that Mr. Taylor?

5 MR. TAYLOR: Yes.

6 THE COURT: All right. Yeah, why -- why don't we
7 see if we can put him back into the call.

8 MR. TAYLOR: Okay, hold on a sec.

9 THE COURT: All right.

10 (Pause in proceedings)

11 THE COURT: Who do we still have on the line right
12 now?

13 MR. OLISS: You still have Jim O'Hara with Graham
14 Curtin.

15 THE COURT: Okay. Mr. Oliss, are you still with
16 us?

17 MR. OLISS: I am, Your Honor.

18 THE COURT: All right. Mr. Taylor, are you still
19 with us or?

20 I tell you what, we'll go off the record right now.
21 And people can talk freely.

22 (Pause in proceedings)

23 THE COURT: All right. Hold on, we went off the
24 record, just so we weren't sitting in silence for a long,
25 long time.

1 Mr. Marchese, do we have you back?

2 MR. TAYLOR: Yes, I tried to call, and I couldn't
3 get through. I think they're having problems with their
4 phone. I'm going to email Joe right now just to see what's
5 happening.

6 MR. MARCHESE: Hello, this is Joe Marchese. I got
7 dropped on the call. Sorry about that.

8 THE COURT: All right. Mr. Marchese, we are -- we
9 are still on. We stopped the record when we realized we
10 didn't have you any no longer, and now we're back -- we're
11 back on the record.

12 Which was the last thing that you remember hearing
13 when we were talking?

14 MR. MARCHESE: The last thing that I remember
15 hearing was you, Judge, saying, now, I could understand,
16 Mr. Marchese, why you would want -- and then I cut out.

17 THE COURT: Okay. All right. Well, what I had
18 said is I can understand why you would want this material,
19 you know, all this B goods, refrigerator information,
20 especially as Mr. Oliss has explained it. I mean, sounds
21 like a lot of these refrigerators were jettisoned either for
22 free or at a fire sale because they were late model and
23 nobody knew what to do with them, but I don't know that it's
24 particularly helpful in determining the true value of what
25 the ENERGY STAR label is worth.

1 And what I -- what I had said just to finish off
2 this, you know, if we have got scratch and dent things, we've
3 got late-model refrigerators that have been discontinued,
4 they're being given away, you've got all sorts of different
5 refrigerators here, it seems to me that we're not only
6 getting information that's not particularly relevant, but may
7 be irrelevant and it may be something that would muddy the
8 waters in a way that we don't want to muddy them.

9 MR. MARCHESE: Well -- I'm sorry. Are you
10 finished, Your Honor, or ...

11 THE COURT: No, yeah, I -- go ahead. I was just
12 going to ask you what your thoughts were.

13 MR. MARCHESE: Yeah, well, my thought on that is
14 this, you know, of course, you know, I trust that, you know,
15 that defense counsel is not misleading anything. But I think
16 as plaintiff's counsel, we have the right to verify that by
17 probing at the documentation and getting testimony of someone
18 knowledgeable, a witness firsthand knowledge of these B good
19 sales.

20 In fact, you know, as Mr. Oliss acknowledged,
21 Mr. McCarter, in his deposition, testified that the reason
22 that there was this recoupment of the RF26VAB models was
23 because of the ENERGY STAR disqualification of that model
24 line by the government. And so I am not ready, as
25 plaintiff's counsel, to -- to just set aside this -- you

1 know, this information, which I -- you know, I do believe is
2 very relevant toward one methodology of getting at a retail
3 discount applicable to the specific ENERGY STAR qualification
4 of that refrigerator.

5 THE COURT: Well, and I -- you know, I appreciate
6 you just don't want to waive the information, but I'm -- I
7 don't know that I'm sold that it's going to be more -- more
8 helpful than it will be harmful, if it has any effect at all.

9 I think in the end the defendant's point may be
10 well taken that because you have late-model refrigerators
11 that -- and because you have a good number that were dented
12 and scratched with, you know, had all sorts of other
13 problems, this information may -- may have very minimal
14 relevance, and, you know, in your own letter, you cited for
15 me, a case that -- just bear with me for a second.

16 MR. MARCHESE: Are you talking about Barton?

17 THE COURT: Yeah, you cited the quote from the
18 Barton case. It says: The party resisting production of
19 discovery bears the burden of establishing lack of relevancy
20 or undue burden.

21 But then you go on -- it goes on to say: They must
22 demonstrate to the court that the requested documents either
23 do not come within the broad scope of relevance, or else that
24 they are of such marginal relevance, that the potential harm
25 occasioned by a discovery would outweigh the ordinary

1 presumption in favor of broad disclosure.

2 I mean, it sounds to me at best, this stuff would
3 be marginally relevant. And, in fact, again, I think it
4 may -- it may muddy the waters. My -- my thinking would be
5 that the judge is going to say, look, this doesn't help --
6 this doesn't help us at all. This isn't clearing anything up
7 with respect to what the value of the ENERGY STAR designation
8 is, whether it's correct or incorrect. I think that there
9 are probably a variety of other avenues you can -- you can
10 probe or go down that -- and I'm sure, you have gone down
11 many of them that are giving a much better picture of what
12 the ENERGY STAR designation is really worth.

13 Mr. Oliss, what are you thoughts on this?

14 MR. OLISS: Well, Your Honor, first, we do agree,
15 and we think this is really a classic example of the marginal
16 relevance of the discovery being outweighed by the burden.

17 I would also add that I wasn't sure that we would
18 go forward today because I thought that plaintiffs might take
19 the position that this issue has been mooted. We have
20 already received the expert report of plaintiff's economist,
21 Colin Weir. And if you recall from plaintiff's counsel's
22 letter, the -- the argument was that this information was
23 necessary in order for him to prepare his damages model.

24 But what we've seen in the expert report is that
25 Mr. Weir does, in fact, argue that the difference between the

1 B goods' value, as they term it, and the retail price of
2 these refrigerators as sold to consumers at Lowe's in the
3 prior years is some measure of damages.

4 He gives no indication that he doesn't have the
5 information he needs in order to make that argument.
6 Obviously, we don't think much of it. We think it suffers
7 from all the flaws that you've just identified, Your Honor,
8 in the sense that it doesn't really capture something
9 meaningful and really only confuses the issues.

10 But, you know, we did produce documents in this
11 case, a lot documents, of those goods, the B goods. Back in,
12 you know, late last year, we negotiated search terms. We did
13 our ESI, and some of the documents resulted go to that issue,
14 and they were able to make use of those documents already
15 from Mr. Weir's report.

16 So I'm not -- and, again, he doesn't indicate in
17 his report that he doesn't have the information he needs --

18 THE COURT: Well, I'm assuming -- I'm assuming that
19 the fact that we're having this call, Mr. Marchese has not
20 taken the position that this is mooted.

21 Is that right, Mr. Marchese?

22 MR. MARCHESE: That's right, Your Honor. And in
23 part, you know, we -- we believe that the defendant has --
24 has sold some of these units, the B goods, also to end users
25 as well as to B good distributors. And as you could see from

1 defendant's letter, that's obviously an argument that they
2 are holding on to is that, you know, the wholesale pricing
3 cannot be used to arrive at a retail discount. You know,
4 obviously, that's not what our expert's telling us, but you
5 know, it seems like there are about a hundred more units that
6 we don't have any information on. And we don't have any
7 context really in terms of --

8 THE COURT: Well, Mr. --

9 MR. MARCHESE: -- what the internal -- you know,
10 what the internal thinking was about -- you know, about the
11 dispositions of these refrigerators, and, you know, we feel
12 like we're entitled to that.

13 THE COURT: Well, Mr. Marchese, answer me
14 something, another concern apart from the relevance concern
15 is the timeliness concern. We are actually past the end of
16 fact discovery. Isn't that right? I mean, at least as it
17 stands right now. And --

18 MR. MARCHESE: Yes.

19 THE COURT: And the defendants have said that you
20 had information, that there was some back-and-forth about
21 B groups late last year, and now, here we are, and you're
22 saying this deposition of Mr. McCarter was what triggered the
23 interest in the B goods discovery.

24 But I mean is their point well taken that this was
25 a topic that -- that came up long ago and could have been

1 explored many, many months ago, and why are we doing it here
2 at the end of discovery when we've got a -- you know, an '11
3 docket case that really ought to move along.

4 MR. MARCHESE: Sure, Your Honor, the -- we had some
5 documents that said, from -- from Samsung that said we're
6 thinking about selling the refrigerators as B goods.

7 Now, I don't know what B goods are because I am not
8 particularly familiar with that concept, you know, in the
9 industry.

10 And when I was at the deposition of Mr. McCarter,
11 and he made himself available on May 8th, I asked him, you
12 know, what are the B goods.

13 And he gave me a general description that said,
14 well, these are products that are sold at a discount. But he
15 said, you know, I don't know what determines a B goods. I
16 don't know the cost of the B goods.

17 And so he -- he testified that he didn't have more
18 specific knowledge than that.

19 We got the deposition transcript on May 19th,
20 analyzed it, and we realized the significance of -- of this
21 concept of the B good sale in connection with the ENERGY STAR
22 disqualification. And only two days later, we got out some
23 follow-up written discovery and, you know -- and then we also
24 added a topic to the 30(b)(6) deposition notice.

25 So I actually think that rather than delay, this --

1 this was a pretty high-level of quality of follow-up
2 discovery on -- on our part. And I don't think it's untimely
3 whatsoever. And we tried to raise all of these -- you know,
4 this dispute within -- within the time period of fact
5 discovery. And that's why we, you know -- reviewed the
6 defendant's objections and responses to our written discovery
7 and tried to convene a meet-and-confer almost immediately, I
8 think, within a day of receiving them.

9 So --

10 THE COURT: All right.

11 MR. TAYLOR: -- I don't think --

12 (Simultaneous conversation)

13 THE COURT: All right. Well, Mr. Oliss, you've
14 represented today -- I mean, Mr. -- Mr. Marchese has said,
15 gee, it's our impression, and we want to test the truth of
16 whether or not these refrigerators, you know, really were
17 just pulled back because of the ENERGY STAR problem and then
18 were resold. You're representing that, well, that's not the
19 only reason some of these refrigerators were pulled back, but
20 that scratch and dent and other reasons might have been
21 rel- -- a part of the deal with at least some of the
22 refrigerators.

23 Is that right?

24 MR. OLISS: Well, yeah, let me just clarify that,
25 that the B goods are, generally speaking, open boxed models,

1 as I understand it, so they're going to be returns, floor
2 models, things of that nature.

3 So, you know, we don't dispute that these
4 refrigerators were gathered and returned because of the
5 ENERGY STAR issue, but they were not pulled from the shelves
6 in the sense that they were, you know, actively, you know,
7 current models.

8 THE COURT: Yeah, I -- Mr. Marchese, I just don't
9 see, given that the model was being discontinued, given that
10 you've got the representation that these were floor models,
11 that they were -- you know, that they were late-term things
12 that all being sent back, and that they were -- you know,
13 given that they were late-term models sold under
14 substantially or disposed of, and some were just given away,
15 but disposed of under substantially different conditions than
16 they -- you know, refrigerators that are -- that are sold,
17 you know, on an ongoing basis as a viable model and as
18 brand-new, I just don't see how this information is going to
19 help advance the ball in this case. You know, we already
20 have your expert report. I'm sure he makes some very good
21 arguments as to what the ENERGY STAR designation is worth.
22 And I think that this is only going to muddy the waters. It
23 may muddy the waters in your favor, but it muddies the
24 waters, and it muddies the waters in a way that I don't think
25 the waters should be muddied. I think that this material or

1 | this information is -- is -- as the defendants argued, either
2 | wholly irrelevant or, again, turning back to your reference
3 | to the Barton case, they're at least of marginal relevance
4 | that the potential harm occasioned by this discovery would
5 | the outweigh presumption in favor of broad discovery. And I
6 | think that the disclosure, to continue with that quote, would
7 | be burdensome. And given that we're at the end of fact
8 | discovery and that we need to keep this case moved forward --
9 | it's an '11 case -- I'm going to foreclose this whole B goods
10 | discovery avenue and deny the applications that you've made
11 | in your June 26th letter. We'll have an order that follows
12 | this that memorializes it, but it's going to be largely for
13 | the reasons and based upon our discussion on the record.

14 | That said, we have a few housekeeping things I need
15 | to -- that I think I should discuss with you all.

16 | Mr. Marchese, given that fact discovery is closed,
17 | your -- everybody's working on expert discovery. Mr. Oliss
18 | said that you just served your report. When are -- when are
19 | the responsive reports due?

20 | MR. MARCHESE: I believe under the current -- under
21 | the current schedule, the responsive -- or rebuttal expert
22 | reports, if any, I believe it would be at the end of August,
23 | but I -- maybe -- maybe Mr. Oliss knows more exactly.

24 | THE COURT: All right.

25 | MR. OLISS: That's correct. Under the order, the

1 rebuttal reports are -- the defendant's reports are due to be
2 filed -- or served, excuse me, on August 31st, I believe.

3 THE COURT: All right. And then you're going to be
4 able to abide by that date, Mr. Oliss?

5 MR. OLISS: Well, I hope so. We do have another
6 issue in that I don't know if it's ready for you or not and
7 then if we'll be able to resolve it, but plaintiffs did
8 produce affidavits and declarations from three experts on
9 July 15th, which was their deadline to do so.

10 (Simultaneous conversation)

11 THE COURT: -- before you even go -- before you
12 even go --

13 (Simultaneous conversation)

14 THE COURT: -- before you even go down this road,
15 let me just ask Mr. Marchese, Mr. Marchese, have you served
16 your expert reports? Or do you have more to come?

17 MR. MARCHESE: We served them, but there -- you
18 know, there was an issue that was raised by defense counsel,
19 which we need to follow up with defense counsel about.

20 But we -- there are no additional experts that we
21 plan to serve any more reports from.

22 THE COURT: All right.

23 Well, then, Mr. Oliss, why don't you -- it sounds
24 like you need to talk. If it turns out that you need more
25 time or you need the Court to weigh in on something that's

1 going on with the experts, certainly let us know, but I think
2 we're putting the cart before the horse, if we're going to
3 have a lengthy discussion about that today on the record.

4 One -- the one other question that I have for
5 Mr. Marchese is we haven't had a class certification motion.
6 Isn't that right?

7 MR. MARCHESE: That's right. My understanding is
8 that under the existing schedule, the class certification
9 motion's due to be filed on September 23d.

10 THE COURT: Okay. All right. Well, then you'll --
11 I won't disturb that unless I hear from you, you know, that
12 there's a problem with experts and that other dates need to
13 be tinkered with. I -- you know, it's an '11 docket, so I
14 want to keep it moving, but I also don't want to be entirely
15 unreasonable, if you run into some minor problems and need
16 slight adjustments to the dates.

17 I guess the only other thing, I don't want you to
18 tell me the content of any settlement discussions you've had,
19 because we're on the record, but have you had settlement
20 discussions?

21 MR. OLISS: We have, Your Honor, and I think I can
22 tell you this much that the defendants recently made a
23 counter to discovery demand with a counteroffer, and we have
24 not received a -- well, we received a nonresponse, I suppose,
25 I can say, from plaintiff. We've asked them to keep

1 considering that and get back to us if they think there's
2 something to talk about. So we think that that -- we had
3 that settlement discussion so the ball is in the plaintiff's
4 court at this point because we made the last proposal.

5 THE COURT: All right. Well, Mr. Marchese, if you
6 ever come -- if you come to the conclusion that their offer
7 is, you know, interesting and you think you would benefit
8 from a conference with the Court in an effort to try and
9 settle it, we would be happy to make time and do that. All
10 right?

11 MR. TAYLOR: Very well, Your Honor, thank you.

12 THE COURT: All right. I guess -- you know, I
13 think that's it for today. You tell me if there's anything
14 else. If there is not, what I'm probably going to do is set
15 a date for an early September conference call, just to make
16 sure that there, you know, haven't been any problems with
17 getting the expert discovery done and whether we're on track
18 for the class certification motion.

19 Is there anything else?

20 MR. OLISS: Your Honor, this is Phil Oliss. I
21 think we have an August conference call.

22 THE COURT: Oh, we do?

23 MR. OLISS: -- already --

24 THE COURT: Oh, it's perfectly possible. I -- if
25 we do, let's just leave it on. All right?

1 MR. OLISS: Okay.

2 THE COURT: We will check. If there's an August
3 call already scheduled, we'll leave it on. If there's not,
4 keep your eyes open and we'll set another one for either
5 August or early September. All right?

6 MR. OLISS: Your Honor, it's Docket Number 115,
7 August 19th, 2015, at 11:30.

8 THE COURT: August 19, okay, that sounds fine. By
9 then, you should have an idea of where we're going with the
10 expert discovery.

11 Hold on one second, folks.

12 Okay, folks, we're going to go off the record now,
13 because I think we've come to an end with what we need to
14 talk --

15 (Conclusion of proceedings at 12:07 P.M.)
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Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 25 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

30th of July, 2015

Signature of Approved Transcriber

Date

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EXHIBIT B

[REDACTED]